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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,941	09/29/2003	Mark Bernard Hettish	2003P08065US	1646

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Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

FEARER, MARK D

ART UNIT	PAPER NUMBER
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2443

MAIL DATE	DELIVERY MODE
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03/03/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/673,941	Applicant(s) HETTISH ET AL.	
	Examiner MARK D. FEARER	Art Unit 2443	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, and 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Final Action of 30 March 2009 is withdrawn.
2. Claims 1-11, 13, and 15-24 are pending in the present application.

3. In view of the appeal brief filed on 23 October 2009, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tonia LM Dollinger/
Supervisory Patent Examiner, Art Unit 2443

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 18 and 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear to the Examiner that the received request is a plurality of requests. As currently written, Claims 1, 18 and 23-24 appear to refer to said request as singular. Corrective action is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 23-24 are rejected under 35 USC 101 since the claims are directed to non-statutory subject matter. Claim(s) 23-24 recite a computer program product that includes a computer readable medium which appears to cover both transitory and non-transitory embodiments. The United States Patent and Trademark Office (USPTO) is

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required to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. *See In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. *See* MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2.

The Examiner suggests that the Applicant add the limitation "non-transitory computer readable medium" to the claim(s) in order to properly render the claims in statutory form in view of their broadest reasonable interpretation in light of the originally filed specification.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11, 13, and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis (US 20030110212 A1) in view of Hashimoto et al. (US 6397282 B1).

9. Claims 1-11, 13, and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis (US 20030110212 A1) in view of Hashimoto et al. (US 6397282 B1).

Consider claims 1, 18 and 23-24. Lewis discloses a system and method, comprising: receiving a request from an application to provide an outgoing message to a destination address (“In the example of step 3206, network applications receive the provisioning event. The provisioning event may be transmitted to other network applications such as the DART or the RAVE via backbone provisioning transport 2816 and network database business logic adaptor 2828. Alternatively, the provisioning event may be transmitted directly to the various network entities such as the RAVE and the DART. In the example of FIG. 32, the provisioning event is transmitted from provisioning system 2808 via backbone provisioning transport 2816, network database business logic adaptor 2828, backbone integration transport 132, to network data business logic 2876. In an alternate embodiment of the present invention, the provisioning event may be transmitted from provisioning system 2808 to network database business logic 2876 in any convenient manner.”) paragraph 0429 (“The routing request generated by processor 220 may include the origination address, destination address, and a unique transaction identification that identifies the message.”) paragraph 0107), said request including data indicative of a message, a said destination address, and an outgoing message type; converting said message to said outgoing message in a format compatible with said outgoing message type, said outgoing message format being a

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different format than the message; sending said outgoing message to said destination address; and providing, in reply to said request ((“The messaging interface 210 communicates with the processor 220. Regarding messages incoming from the messaging interface 210, the processor 220 operates to translate messages between the messaging element 205 format or protocol and the common format utilized on the network transport bus 125. In addition, the processor 220 generates routing requests to a router, generally a RAVE 130. In order to generate a routing request, the processor 220 may, for example, parse the incoming message from the message interface 210 to retrieve an originating address and a destination address from the incoming message. The routing request generated by processor 220 may include the origination address, destination address, and a unique transaction identification that identifies the message. The processor 220 receives a routing response via the network transport bus interface 230 that contains routing information for the received message. Based on that routing response, the processor 220 operates to route messages received from the messaging interface 210 to an appropriate destination.”) paragraph 0107), and a response to said application indicative of a success of said sending of said outgoing message to said destination address ((“The message device status table stores message and device information. In this example, the message device status table contains device type information, a routing identifier, device status, completion date, query attempts, retry attempts, the number of segments of a multi-segment message that were delivered successfully, and the number of segments of a multi-segment message that were not delivered successfully. The device type information, for example, includes the type of

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device and any relevant associated characteristics. The routing identifier, for example, may be a string that denotes a particular route to be traveled by a message. Device status information may include information about whether a particular device is turned on or is in use. Query attempts and retry attempts, in this example, refer to the number of query attempts made on a message and the number of attempts made at delivery, respectively. Likewise, the number of segments of a multi-segment message delivered successfully and unsuccessfully are stored so that multi-segment messages may be properly delivered. In this example, the message device status table has as its foreign key a message identifier. In this manner, the message device status table references message store table for message information.”) paragraph 0224).

However, Lewis fails to disclose a system or method wherein data indicative of a message, a destination address, and an outgoing message type, are not all received in the same request at a same time.

Hashimoto et al. discloses a communication controller for transferring data in accordance with the data type wherein data indicative of a message, a destination address, and an outgoing message type, are not all received in the same request at a same time ((“To address the above-mentioned problem, a communication controller of an embodiment of the invention comprises a storage for storing the data of the message being received, a determining unit for determining types of message being received, and a transmission controller for generating interruption requests at different timing for transferring data to the data processor responsive to the determining unit. According to an embodiment of the present invention, interruption requests to transfer data are

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generated at different timing according to the types of the message. That is, for instance, an interruption request is generated immediately for the message of the type which requires urgency. An interruption request is generated by another criteria relative to a message which is not urgent. Therefore, data which requires urgency is transferred to a data processor speedily without interrupting the data processor too frequently. Thus, an efficient system operation is achieved.”) column 2 lines 23-39).

Lewis discloses a prior art system and method, comprising: receiving a request from an application to provide an outgoing message to a destination address, said request including data indicative of a message, a said destination address, and an outgoing message type; converting said message to said outgoing message in a format compatible with said outgoing message type, said outgoing message format being a different format than the message; sending said outgoing message to said destination address; and providing, in reply to said request, and a response to said application indicative of a success of said sending of said outgoing message to said destination address upon which the claimed invention can be seen as an improvement.

Hashimoto et al. teaches a prior art comparable communication controller for transferring data in accordance with the data type wherein data indicative of a message, a destination address, and an outgoing message type, are not all received in the same request at a same time.

Thus, the manner of enhancing a particular device (communication controller for transferring data in accordance with the data type wherein data indicative of a message, a destination address, and an outgoing message type, are not all received in the same

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request at a same time) was made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in Hashimoto et al. Accordingly, one of ordinary skill in the art would have been capable of applying this known improvement technique in the same manner to the prior art system and method, comprising: receiving a request from an application to provide an outgoing message to a destination address, said request including data indicative of a message, a said destination address, and an outgoing message type; converting said message to said outgoing message in a format compatible with said outgoing message type, said outgoing message format being a different format than the message; sending said outgoing message to said destination address; and providing, in reply to said request, and a response to said application indicative of a success of said sending of said outgoing message to said destination address of Lewis and the results would have been predictable to one of ordinary skill in the art, namely, one skilled in the art would have readily recognized a notification platform architecture.

Consider claim 2, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method further comprising: establishing a protocol for receiving data indicative of a message to be sent to a destination address (Lewis, paragraph 0127).

Consider claim 3, as applied to claim 2. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes parameters for outgoing message type and destination address (Lewis, paragraph 0127).

Consider claim 4, as applied to claim 2. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes parameters for incoming message type and sender address (Lewis, paragraph 0298).

Consider claim 5, as applied to claim 2. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes a parameter for a service provider to be used to send said outgoing message (Lewis, paragraph 0245).

Consider claim 6, as applied to claim 2. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes a parameter for a maximum size of said outgoing message (Lewis, paragraph 0225).

Consider claim 7, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method wherein said data is indicative of an address associated with a sender of said message (Lewis, paragraph 0298).

Consider claim 8, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method wherein said data is indicative of a service provider to use in said sending said outgoing message to said destination address (Lewis, paragraph 0245).

Consider claim 9, as applied to claim 8. Lewis, as modified by Hashimoto et al., discloses a method wherein said sending said outgoing message to said destination address includes sending said outgoing message to said destination address via said server provider (Lewis, paragraph 0245).

Consider claim 10, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method wherein said data is indicative of a maximum size for said outgoing message (Lewis, paragraph 0225).

Consider claim 11, as applied to claim 10. Lewis, as modified by Hashimoto et al., discloses a method wherein said converting said message to an outgoing message in a format compatible with said outgoing message type includes converting said message into said outgoing message such that said outgoing message does not exceed said maximum size (Lewis, paragraphs 0098 and 0225).

Consider claim 13, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method further comprising: sending a response message to said application, said response message being indicative of an error in delivery of said outgoing message to said destination address (Lewis, paragraph 0308).

Consider claim 15, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method further comprising: determining that said outgoing message was not delivered to said destination address (Lewis, paragraph 0308).

Consider claim 16, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method wherein said receiving data a request from an application includes receiving said data in accordance with a pre-established protocol (Lewis, paragraph 0222).

Consider claim 17, as applied to claim 1. Lewis, as modified by Hashimoto et al., discloses a method further comprising: establishing a protocol indicative of how to send a message to a sender of said data (Lewis, paragraph 0222).

Consider claim 19, as applied to claim 18. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes parameters for incoming message type and sender address (Lewis, paragraph 0298).

Consider claim 20, as applied to claim 18. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes a parameter for a service provider to be used to send said outgoing message (Lewis, paragraph 0245).

Consider claim 21, as applied to claim 18. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes a parameter for a maximum size of said outgoing message (Lewis, paragraph 0225).

Consider claim 22, as applied to claim 18. Lewis, as modified by Hashimoto et al., discloses a method wherein said protocol includes at least one parameter for providing data to said application indicative of an error in delivery of said outgoing message to said destination address (Lewis, paragraph 0308).

Response to Arguments

10. Applicant's arguments filed 23 December 2009 with respect to claims 1, 18, and 23-24 have been considered but are not persuasive.

Applicant argues that Lewis, as modified by Hashimoto et al., is silent regarding, in particular, the claimed request from an application including data indicative of an outgoing message type.

Examiner respectfully disagrees. Lewis discloses the need for an application to request a specific data type ("Currently, the capability of a messaging system to dynamically interact with a customer is limited. In general, a messaging system facilitates the transmission of messages, such as text messages, over a communications network. For example, in a conventional pager or Mobitex system, text

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messages are transmitted over a wireless network. A typical messaging system does not provide a configurable interface in which a customer can interact with the messaging system. Those messaging systems that do provide such an interface limit the ability of that interface to only a few basic functions. For example, a typical messaging infrastructure does not permit a customer to query the status of a message based on a unique identifier. Further, a typical messaging infrastructure does not allow a customer to create a password protected distribution list or request a specific type of message notification. Instead, conventional messaging systems limit the functional interaction with customers to some basic routines.”) Lewis, paragraph 0004).

Applicant argues that Lewis, as modified by Hashimoto et al., does not disclose that the claimed aspect of the request "data indicative of a message, the destination address, and the outgoing message type are not all received in the same request at a same time".

Examiner respectfully disagrees. Hashimoto et al. discloses a system and method comprising a determining unit that controls the timing of message requests to control network traffic, which reads on the claimed “message type are not all received in the same request at a same time” ((“To address the above-mentioned problem, a communication controller of an embodiment of the invention comprises a storage for storing the data of the message being received, a determining unit for determining types of message being received, and a transmission controller for generating interruption

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requests at different timing for transferring data to the data processor responsive to the determining unit.”) Hashimoto et al., column 2 lines 23-29).

Conclusion

11. Any response to this Office Action should be faxed to (571) 273-8300 or mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Mark Fearer whose telephone number is (571) 270-1770. The Examiner can normally be reached on Monday-Thursday from 7:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number

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for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

Mark Fearer
/M.D.F./
March 24, 2009

/George C Neurauter, Jr./

Primary Examiner, Art Unit 2443